

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION III

CA06-1454

June 20, 2007

EMILY YEAGER		APPEAL FROM THE WASHINGTON
	APPELLANT	COUNTY CIRCUIT COURT
V.		[JV-2005-764-3]
ARKANSAS DEPARTMENT OF		HONORABLE STACY A.
HEALTH & HUMAN SERVICES;		ZIMMERMAN, JUDGE
MINOR CHILDREN		
	APPELLEES	AFFIRMED

This is a no-merit appeal from an order terminating the parental rights of Emily Yeager to her children, N.G. (d.o.b. 5/22/02) and A.G. (d.o.b. 6/2/03). At the time of the termination of Yeager's parental rights, the rights of the children's father, Chris Gillean, were not terminated, and Gillean is not a party to this appeal. Counsel for Yeager has filed a no-merit brief and a motion to withdraw, pursuant to *Linker-Flores v. Arkansas Department of Human Services (Linker-Flores I)*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Rule 4-3(j)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals. The clerk of this court notified Yeager of her counsel's motion and her right to file pro se points, and Yeager has filed pro se points. Arkansas Department of Health and Human

Services (ADHHS) has not filed a response to Yeager's points. We affirm the trial court's termination of Yeager's parental rights, and we grant her attorney's motion to withdraw.

This case originated on August 16, 2005, when ADHHS received a report from the Springdale Police Department that N.G. and A.G. were wandering around their apartment complex unattended; N.G. was clothed only in a diaper and shorts, and A.G. was nude. Police officers alleged that they had attempted to contact Yeager but that there was no answer at her door. Yeager later arrived at the police station with clothes for the children and was told that her children were going to be taken because they were inadequately supervised and because Yeager was being arrested for two counts of endangering the welfare of a minor. When asked, Yeager stated that she "had done meth yesterday." ADHHS exercised a seventy-two hour hold on the children and was granted an ex parte order of emergency custody on August 19, 2005.

A probable-cause hearing was held on August 26, 2005. Yeager testified that she had not used drugs on a regular basis and that what she had admitted to on the day her children were removed from her custody was a relapse. Yeager stated that the children's father, Chris Gillean, was currently incarcerated; that they were never married; and that although he was listed on the birth certificates, paternity had not been established by any court. She also testified that she had received an eviction notice from the housing authority. She said that she had just started a job at McDonald's, but that she did not work before the children were in preschool because she had no daycare. She further said that she had been incarcerated in 1998 and had violated her probation, but that she had not been incarcerated since the children had been born.

Karen Jones, a family-service worker supervisor, testified that the children were together but had been moved three times due to their behavior. She said that she was currently looking into therapeutic foster care. She stated that when the children were separated, they could be controlled, but that when they were together, it was almost impossible to control them. She said that she believed that the children's behavioral problems were due to the lack of supervision in the home and the fact that they needed services. Jones stated that they could work with Yeager so that the children could return home, but that she did not believe that the children needed to go home that day. The trial court found that there was probable cause to continue the children in the custody of ADHHS and also ordered that Yeager be drug tested.

The adjudication hearing was held on September 28, 2005. Yeager told the trial court that she was a single mom and that she needed some help because her two children were really active and that she was bipolar and had been without her medication for a long time. Yeager testified that she did not have a driver's license because she had lost it at age eighteen for a DWI and did not have the money to have it reinstated. She also said that she owed the City of Springdale approximately \$900 in fines; that she had made arrangements to do public service to pay those fines; but that she had not done any of the community service even though she had incurred the fines almost three years earlier. Yeager testified that Gillean was in prison for beating her, but that he should be back sometime in the next month. Yeager again stated that her use of meth right before her children were taken into custody was a "slip up" and that she had not used drugs in years prior to that time.

Darla Hash, an ADHHS caseworker, testified that the children had been placed in three different homes, were currently at a shelter because of their aggressive behavior, and had not been placed in therapeutic foster care because there were currently no openings. The trial court adjudicated both children dependent/neglected, based upon illegal drug use, inadequate supervision, and the fact that Yeager had been evicted from her apartment.

A review hearing was held on December 7, 2005. Darla Hash testified that Yeager attended her visits with the children and that the visits were positive, but that Yeager had not participated in any family or individual counseling; that she had not attended her evaluation for her medication; that she had only taken two hours of parenting classes out of fifteen hours; and that she had been evicted from her apartment and was currently living with her mother in Springdale. Hash said that Yeager had passed all of her drug screens and was working making angel pins through the mail, which paid fifty cents per pin. Hash related that Yeager had told her that the children had witnessed domestic violence between Yeager and Gillean. Hash stated that Yeager had not achieved any of her goals. However, Hash testified that there had been great improvement in the children's behavior since they had been placed in therapeutic foster care and had begun counseling, and that the children were now much calmer.

Yeager arrived an hour and forty minutes after the review hearing was scheduled to begin; she stated that her ride did not show up and then her aunt took the wrong exit. She said that she thought Gillean should have visits with the children because he had never outright struck them on purpose, although she admitted that Gillean had accidentally hit N.G. when he was "going after her." When asked if she had undergone a

drug and alcohol assessment, Yeager said that was to be done in connection with her psychiatric assessment, and that she did not think that she had a problem now, even though she had a problem in the past. Yeager said that she was not taking any medication for her bipolar disorder because ADHHS had not made her a referral. Yeager admitted that she had not completed all fifteen hours of parenting classes. When asked if she thought that she was acting in a hostile manner, she said that she felt that she was under attack.

The trial court went through the history of the case and noted that although Yeager had an intake session two months earlier, she had not been in counseling as ordered. The trial court also noted that Yeager was not taking her medication; had not completed parenting classes; had not maintained stable housing and employment; had not been participating in family counseling; had not kept her earlier appointment for a psychological evaluation because Yeager felt it would not do any good because the doctor could not prescribe medication and she had a psychiatric evaluation for her criminal case set up for later in the month; had arrived over an hour and a half late for court; had chronically arrived late for visits with her children; and was drunk during the review hearing, noting that the court could smell alcohol and Yeager was slurring her words. The trial court terminated Yeager's visitation with her children until she was sober, and set a no-reunification hearing for February 23, 2006.

At the no-reunification/permanency-planning hearing, Darla Hash testified that Yeager had not begun counseling but had kept her appointment with Dr. Faitak, who found that Yeager did not have the financial means to take care of her children and that

Yeager needed to address her emotional and mental-health issues. Yeager's drug and alcohol assessment recommended that she be referred to drug court because of her dependency. Hash testified that Yeager had tested positive for methamphetamine on December 21; had not attended domestic-abuse or individual counseling; did not have a job; lived with her sister and her father; had not maintained contact with Hash; had only completed eight hours of parenting classes; and had not kept her appointment at Ozark Guidance Center. Hash stated that Yeager was not in compliance with the court orders and case plan and asked that ADHHS be relieved of providing services and that the case proceed toward termination of parental rights.

Yeager testified that she set up counseling but that she and the counselor both agreed that they did not want to see each other and that she could not go to counseling until that counselor referred her to a new counselor. Yeager said that she had obtained her psychological evaluation and drug and alcohol assessment, and that except for the last three weeks, she had maintained contact with Darla Hash. She admitted that she had only completed eight hours of parenting classes, had not started her medication, and had not gotten a job. Yeager said she did not have her own housing because she did not have any income. The trial court granted ADHHS's motion for a no-reunification finding with respect to Yeager, stating that Yeager admitted that she was drunk in court and that the evidence indicated that she was not in compliance with court orders. The trial court further noted that Yeager had tested positive for methamphetamine in December; had not participated in counseling; had not kept medication appointments; did not follow the case plan; and had done little to address the alcohol problem. The trial court found that

Yeager had done nothing to remedy the situation from August 2005, when the children were removed, to December 2005 and that she had only obtained her evaluations due to facing criminal charges in drug court. The trial court found that the children could not be returned to Yeager, and that the goal of the case should be changed to adoption.

The termination hearing was held on May 17, 2006. At that hearing Alicyn Hennis, a counselor at Ozark Guidance Center, testified that she was counseling the children and that A.G. was doing well but was still struggling with following directions and self-harm behaviors, although that was reduced. She said that N.G. was still aggressive and violent, but that it was likely that he had been exposed to violence and chaos in the home. Hennis testified that Yeager had missed appointments and seemed to have difficulty following through with some of the requirements in her life as far as Drug Court and maintaining a level of stability. Hennis said that she did not believe it was clinically appropriate for the children to have contact with Yeager, given her difficulties, and that there needed to be a significant period of sobriety; stability in housing, employment, and finances; individual therapy; and medication management. Hennis said that she believed that N.G. could be successfully adopted because he was young and could correct some of his disruptive behaviors.

Darla Hash testified that to her knowledge, Yeager had not participated in counseling since the February hearing and had not maintained contact with her. Hash said that ADHHS was relieved of providing services, and that it appeared that Yeager had violated drug court. Hash recommended that Yeager's parental rights be terminated because it was in the best interests of the children. She said that the children were

adorable, loving little kids, and she thought they could be adopted. She stated that Yeager had done nothing to remedy the situation that caused the children to be removed from the home, that she had offered all kinds of services, and that they had not helped.

Yeager testified that she was incarcerated at the Washington County Jail because she had violated the terms of drug court and that she was going to treatment at Decision Point when she left the courtroom. She said that she knew she was not stable, but she asked the trial court to give her more time to do everything that she was supposed to do.

The trial court found that almost a year after the children were taken into custody, Yeager had not resolved the problems that had caused the children to come into ADHHS care in the first place. The trial court pointed out that Yeager had come over from jail, where she had pending drug charges; she had admitted that she used meth; she had been arrested for domestic assault; and despite meaningful efforts by the department to provide services, she had not remedied those situations. The trial court found that it could not return the children to Yeager and that it was in their best interests for Yeager's parental rights to be terminated, finding that Yeager had subjected the children to aggravating circumstances.

The no-merit procedure set forth in *Anders v. California*, 386 U.S. 738 (1967), applies to cases of indigent-parent appeals from orders terminating parental rights. *Linker-Flores I, supra*. In that case, our supreme court, citing *Anders*, set forth the procedure for counsel's withdrawal:

[I]f counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That



request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal.

A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court – not counsel – then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds, it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires.

On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.

359 Ark. at 139, 194 S.W.3d at 745–46. In *Lewis v. Arkansas Department of Human Services*, 364 Ark. 243, 217 S.W.3d 788 (2005), our supreme court held that the appellate court's review of the record for adverse rulings is limited to the termination hearing if no appeal was taken from the adjudication, review, and permanency-planning hearings, which were final, appealable orders. However, the appellate courts are required to examine the evidence from all of the hearings and proceedings in reviewing the sufficiency of the evidence to terminate parental rights when the trial court has incorporated by reference all of the hearings and proceedings in the case that lead to the termination hearing. *Id.*

In *Camarillo-Cox v. Arkansas Department of Human Services*, 360 Ark. 340, 351–52, 201 S.W.3d 391, 398–99 (2005) (citations omitted), our supreme court stated the well-known standard of review in parental-termination cases:

In cases where the issue is one of termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. Parental rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. On appellate review, this court gives a

high degree of deference to the trial court, which is in a far superior position to observe the parties before it.

Pursuant to Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2002), an order terminating parental rights must be based upon clear and convincing evidence. Clear and convincing evidence is that degree of proof that will produce in the factfinder a firm conviction as to the allegation sought to be established. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. In resolving the clearly erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses.

The only adverse ruling at the termination hearing was the decision to terminate Yeager's parental rights. Given the testimony above, we cannot say that the trial court was clearly erroneous in terminating Yeager's parental rights.

Yeager filed pro se points, which delineate the steps she has now taken to try to stay clean and sober and to stay on her bipolar medication. While it is admirable that Yeager is now attempting to get her life back on the right track by becoming drug free and taking her medication for her mental illness, her children cannot wait to see if and when her rehabilitation will be lasting. Yeager made no improvement from the time her children were taken from her custody until the time her parental rights were terminated; in fact, Yeager was incarcerated at the time of the termination hearing for drug court violations, and was leaving at the end of the hearing for rehabilitation. Yeager's points do not persuade this court that the trial court erred in terminating her parental rights, as everything she points to occurred after her parental rights were terminated and is not contained in the record.

The termination of Yeager's parental rights is affirmed, and Yeager's attorney's motion to withdraw is granted.

HART and GRIFFEN, JJ., agree.